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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1965

No. 710

CONTINENTAL GRAIN COMPANY, *Petitioner,*

v.

THE STATE OF WASHINGTON, *Respondent.*

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATE PRINTING PLANT, OLYMPIA, WASH.

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Pursuant to Rule 24, Supreme Court Rules, the respondent submits the following Brief in Opposition to the petitioner's Petition for a Writ of Certiorari.

I

COUNTERSTATEMENT OF THE CASE

The petitioner's statement of the facts material to the question presented distorts the true nature of its activities and mistakenly identifies the incidence of tax. For these reasons we submit the following counterstatement:

The petitioner is engaged in the business of operating licensed public warehouses at Longview,

Washington. At these warehouses it receives and stores grain that, for the most part, will ultimately be disposed of by shipment overseas. For its services in receiving and storing grain the petitioner charges the owner of the grain certain fees. These fees are based on contracts or tariffs filed with and approved by the State of Washington.

The grain which is received at the petitioner's licensed public warehouses at Longview is produced in Washington, Oregon, Idaho and Western Montana. This grain is transported to the petitioner's warehouses by common carrier (either by truck, railroad or barge) on bills of lading consigned for the most part to the owner of the grain, which ladings indicate Longview, Washington, as point of destination or port of discharge. The responsibility of unloading this grain is that of the petitioner and not the carrier of the grain. The petitioner does not own or lease any of the means of transporting this grain to and from its licensed public warehouses at Longview. Inspectors employed by the Department of Agriculture of the State of Washington inspect and grade all grain received at or shipped from the petitioner's warehouse facilities at Longview. After a period of storage the grain is either sold to the petitioner while in storage at Longview or loaded onto vessels for shipment overseas.

The tax in question was assessed under RCW 82.16.020 which imposes a tax on " * * * every person * * * engaging within this state in any

one or more of the businesses herein mentioned. * * *" One of the businesses herein mentioned is that of a public warehouseman, RCW 82.16.010(11). For the full text of this subsection and RCW 82.16-.020, see Appendix A of the petitioner's petition.

The tax in question is imposed on the business of operating a public warehouse and is measured by the receipts from that business. A necessary incident to the business of operating a public warehouse is the unloading of commodities from carriers. The tax is not imposed, however, on the receipts themselves from such unloading, as the petitioner erroneously suggests.

II

ARGUMENT

Reasons for Denying the Writ.

1. The first reason assigned by the petitioner for granting the writ is that the decision of the Washington Supreme Court is not in accord with the decisions of this court, to-wit, *Joseph v. Carter & Weekes Stevedoring Co.*, 330 U.S. 422 (1947); *Puget Sound Stevedoring Co. v. Tax Commission*, 302 U.S. 90 (1937).

The validity of these two cases and the proposition for which they stand we do not dispute. They stand for the proposition that:

> "* * * Stevedoring * * * is essentially a part of the commerce itself and there-

> fore a tax upon its gross receipts or upon the privilege of conducting the business of stevedoring for interstate and foreign commerce, measured by those gross receipts, is invalid. * * *"

These two cases, however, do not stand for the proposition that a public warehouseman who, incident to its storage activities, unloads grain from a common carrier whose responsibility for the transportation of the grain has terminated, is entitled to deduct amounts charged for unloading.

These two cases are limited to stevedoring activities that, because of historical custom and usage, are considered an integral part of interstate or foreign commerce itself. They are not authority for the proposition that the activity of unloading grain from railroad cars or other carriers originating from without the state under employment by the owner of the grain enjoys the same status as the activity of unloading cargo from vessels engaged in interstate or foreign commerce under employment of the carrier. To our knowledge (and the record is silent on this point) it never has been the duty of train or inland transportation crews to unload the freight from loaded cars engaged in interstate transportation when they arrive at the point of destination. The stipulated facts show that it was the duty of the owner of the grain to arrange for its unloading.

2. The writ should be denied for the reason that the question presented has already been determined by this Court. The cases of *Canton R. Co. v. Rogan*, 340 U.S. 511 (1951), and *Western Maryland R. Co.*

v. Rogan, 340 U.S. 520 (1951), make it clear that the handling of exports and imports within a port, except as to stevedoring, and the transportation of exports and imports to and from a port are subject to nondiscriminatory state gross receipts taxes. The line drawn in these cases is the water's edge, *viz.*, the loading on and off of the ship itself.[1]

3. The writ should be denied for the reason that even if we were to assume, *arguendo*, that the unloading of grain from carriers originating from without the State of Washington is a continuation of the transportation process, this unloading activity is still properly subject to a gross receipts tax. As pointed out, *infra*, the tax does not discriminate against interstate commerce in favor of competing intrastate commerce of like character nor can any other state repeat the tax, since the subject of taxation is exclusively local in nature. For these reasons, the commerce clause does not invalidate the tax. *Interstate Oil Pipe Line Co. v. Stone*, 337 U.S. 662 (1949).

4. The second reason assigned by the petitioner for granting a writ is based upon an erroneous reading of the statute. The petitioner contends that RCW 82.16.050(8), which allows a deduction for amounts derived from the transportation of commodities to an export elevator from points of origin within Washington and thereafter forwarded by water car-

[1]It should be noted that the respondent allowed the petitioner a deduction for amounts it derived for loading grain from its terminal storage warehouses to ships.

rier in their original form in interstate or foreign destinations, discriminates against interstate commerce. Presumably, the alleged discrimination is that the statute does not allow a comparable deduction on amounts derived from the transportation of commodities originating from points within the state. This is erroneous. RCW 82.16.050(6)[2] allows a deduction on amounts derived from businesses which the state is prohibited from taxing under the constitution of this state or the constitution or laws of the United States. This Court has made it abundantly clear that an unapportioned gross receipts tax on the privilege of carrying on an exclusively interstate transportation business is immune from state tax under the commerce clause. *Spector Motor Service v. O'Connor*, 340 U.S. 602 (1951).

There is, however, a more basic fallacy to the petitioner's contention. The statutory deduction to which it refers applies only to amounts derived for the *transportation* of commodities. It does not apply on amounts derived from *unloading* of commodities after the transportation has ceased. Under the aforementioned statutory provisions, amounts derived from the transportation of commodities to export facilities are deductible whether the transportation originates from within or without the state.

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[2]"Amounts derived from business which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States;"

III

CONCLUSION

For the reason that the decision of the Supreme Court of the State of Washington is in accord with the relevant decisions of this Court, we respectfully request that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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